

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ERICKSON PRODUCTIONS INC, et al.,

Plaintiffs,

v.

KRAIG RUDINGER KAST, et al.,

Defendants.

Case No. 13-cv-05472-DMR

**ORDER DENYING MOTION TO  
ALTER/AMEND JUDGMENT**

Re: Dkt. No. 581

On December 6, 2024, the court issued an order on Plaintiffs' motion for attorneys' fees and costs following the retrial of the question of willful copyright infringement and determination of statutory damages. [Docket No. 579 ("Fee Order"); Docket No. 580 (amended judgment)].<sup>1</sup> After weighing the Copyright Act's discretionary factors, the court determined that Plaintiffs are entitled to a supplemental fee award even though the second jury only awarded one-tenth of the amount awarded by the first jury that was subsequently vacated on appeal, and Plaintiffs had already received two significant fee awards for work performed in this case. [Fee Order at 8-9]. After carefully reviewing the time records, the court determined that the number of hours sought by Plaintiffs should be reduced:

Given the history of the case, a significant portion of the work performed for the second trial was duplicative of work performed in the earlier phases of the case for which Erickson has already been awarded fees. Moreover, the time records reflect a total of 504.8 hours but are not summarized by timekeeper, making it difficult for the court to discern how many hours were spent by Kleinman or Ayala. Kleinman never appeared in court before the undersigned. As a result, the court is unable to assess the role

<sup>1</sup> Detailed case descriptions are set forth in the February 12, 2021 Order re: Willfulness and Damages Following Remand, the August 26, 2024 Order on Defendant's Post-Trial Motions, and the Fee Order. [Docket Nos. 380, 572, 580].

1 Kleinman played in the case. For these reasons, the court finds it  
2 appropriate to reduce the total amount of attorneys' fees sought,  
3 \$252,401, by 30%. Accordingly, it awards \$176,680.70 in  
attorneys' fees [for this phase of the case].

4 Fee Order at 13 (citation and footnote omitted).

5 Pursuant to Federal Rule of Civil Procedure 59(e), Plaintiffs now move to alter or amend  
6 the Fee Order and the amended judgment. [Docket No. 581 ("Mot.")]. Defendant opposes the  
7 motion and Plaintiffs filed a reply. [Docket Nos. 586, 587]. This matter is suitable for  
8 determination without oral argument. Civ. L.R. 7-1(b). For the following reasons, the motion is  
9 denied.

10 "Rule 59(e) permits a district court to reconsider and amend a previous order[.]" *Kona*  
11 *Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). However, it is an  
12 "extraordinary remedy" which "should not be granted, absent highly unusual circumstances,  
13 unless the district court is presented with newly discovered evidence, committed clear error, or if  
14 there is an intervening change in the controlling law." *Id.* (citations and internal quotation marks  
15 omitted). "[T]he district court enjoys considerable discretion in granting or denying the motion."  
16 *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011) (citation omitted).

17 On a Rule 59(e) motion, "courts will not address new arguments or evidence that the  
18 moving party could have raised before the decision issued." *Banister v. Davis*, 140 S. Ct. 1698,  
19 1703 (2020) (citations omitted); *accord Kona*, 229 F.3d at 890 ("A Rule 59(e) motion may *not* be  
20 used to raise arguments or present evidence for the first time when they could reasonably have  
21 been raised earlier in the litigation."). However, "[a] Rule 59(e) amendment may be particularly  
22 appropriate where . . . the amendment reflects the purely clerical task of incorporating undisputed  
23 facts into the judgment." *Allstate*, 634 F.3d at 1111 (citation omitted).

24 A Rule 59(e) motion "must be filed no later than 28 days after the entry of the judgment."  
25 Fed. R. Civ. P. 59(e). A district court "[has] no power to extend the time for filing a Rule 59(e)  
26 motion." *Harman v. Harper*, 7 F.3d 1455, 1458 (9th Cir. 1993) (citation omitted). Here,  
27 Plaintiffs filed their motion within the 28-day period.  
28

1 Plaintiffs do not provide newly discovered evidence<sup>2</sup> nor do they point to an intervening  
 2 change in the controlling law. As such, Plaintiffs must establish that the court “committed clear  
 3 error.” *Kona*, 229 F.3d at 890. Plaintiffs argue that the court’s 30% reduction was clearly  
 4 erroneous because “none of the work performed on remand was duplicative [of work for the first  
 5 trial],” and because Kleinman’s work was “substantial and necessary.” [Mot. at 4-8]. These  
 6 arguments are nothing more than disagreements with the Fee Order. This court has presided over  
 7 this matter since June 2019 and has had ample opportunity to review the record from the original  
 8 trial – first, to issue its Order re: Willfulness and Damages Following Remand [Docket No. 380],  
 9 and then to preside over the second trial after a second remand. As such, the court is in a strong  
 10 position to assess the overall reasonableness of the requested fees. *See Chalmers v. City of Los*  
 11 *Angeles*, 796 F.2d 1205, 1211 (9th Cir.1986), *amended on other grounds*, 808 F.2d 1373 (9th Cir.  
 12 1987) (“The district court is in the best position to determine in the first instance the number of  
 13 hours reasonably expended in furtherance of the successful aspects of a litigation and the amount  
 14 which would reasonably compensate the attorney.”); *Ingram v. Oroudjian*, 647 F.3d 925, 928 (9th  
 15 Cir. 2011) (“The district court is in the best position to discern what work was unnecessary . . . .”)

16 Plaintiffs’ Rule 59(e) motion is denied.

17  
 18 **IT IS SO ORDERED.**

19 Dated: April 8, 2025

20  
 21   
 22 Donna M. Ryu  
 23 Chief Magistrate Judge  
 24  
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26  
 27 <sup>2</sup> Plaintiffs submitted a new set of time records that are organized differently than the records they  
 28 filed with their original fee motion. This is not “new evidence,” and amounts to an improper  
 attempt at a do-over. Plaintiffs could and should have made their best evidentiary presentation in  
 the original fee motion. For this reason, the court declines to consider Plaintiffs’ revamped time  
 records.